

**IN THE COURT OF APPEALS OF IOWA**

No. 3-981 / 13-0483  
Filed November 20, 2013

**IN THE INTEREST OF W.G.,  
Minor Child,**

**W.G., Minor Child,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, Mark R. Fowler,  
District Associate Judge.

A child appeals the juvenile court order finding he engaged in the  
delinquent acts of indecent exposure and assault with intent to commit sexual  
abuse. **AFFIRMED.**

Joel Walker, Davenport, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Steve Berger, Assistant  
County Attorney, for appellee State.

Considered by Vogel, P.J., Mullins, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**HUITINK, S.J.****I. Background Facts & Proceedings.**

The record presented during the juvenile court hearing in this case supports the following factual findings. Shortly before A.C., who was then eleven years old, started fifth grade, he was playing by himself in a local park when an older boy, W.G., who was then fourteen years old, approach him. W.G. pushed A.C. against a gate, pulled his pants down, and touched his “privates.” A.C. kicked W.G. and ran away. A similar incident occurred on the next day, but A.C. testified that on that occasion W.G. squeezed his “privates,” or testicles. A.C. kicked W.G. again and left.

A third incident occurred a few days later when W.G. pulled his own pants down and A.C. glimpsed his penis. W.G. said something to the effect of, “Do you think my private looks big?” or asked how large his penis was. A.C. walked away. A few days after that, a fourth incident occurred in which W.G. showed A.C. a knife and told him not to tell anybody. A.C. ran away from W.G.

When A.C. started fifth grade, he got in trouble at school. He was also “really aggressive” at home. A school counselor talked to A.C., and A.C. revealed the incidents that had occurred with W.G. A.C. identified W.G. for the counselor by finding his picture in a school yearbook.

The State filed a petition alleging W.G. had engaged in the delinquent acts of indecent exposure, in violation of Iowa Code section 709.9 (2011), and assault with intent to commit sexual abuse, in violation of section 709.11. A hearing was held at which A.C. testified as noted above. A.C.’s mother testified concerning his problems at school and at home at about the time he started fifth grade. She

also testified that she permitted A.C. to ride his bicycle to the park. W.G. testified and denied the incidents had occurred. He stated, however, that he had seen A.C. at the park.

The juvenile court determined the State's witnesses were credible. The court stated, "The victim's testimony was consistent and corroborated on several points. His testimony was consistent on relevant facts." The court determined W.G. had committed the delinquent acts of indecent exposure and assault with intent to commit sexual abuse. He now appeals.

## **II. Standard of Review.**

Juvenile delinquency proceedings are not criminal prosecutions but are special proceedings. *In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013); *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). "The primary goal of juvenile proceedings is to further the best interests of the child—not to punish but instead to help and educate the child." *A.K.*, 825 N.W.2d at 51.

"The child shall be presumed to be innocent of the charges and no finding that a child has engaged in delinquent conduct may be made unless the state has proved beyond a reasonable doubt that the child engaged in such behavior." Iowa Code § 232.47(10). The juvenile court's decision is reviewed de novo. *A.K.*, 825 N.W.2d at 51. We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *J.D.F.*, 553 N.W.2d at 587.

## **III. Merits.**

**A.** Under section 709.9, the offense of indecent exposure occurs when a person exposes the person's genitals or pubes to another person who is not the

person's spouse, "if: (1) The person does so to arouse or satisfy the sexual desires of either party; and (2) The person knows or reasonably should know that the act is offensive to the viewer."

The first element of the offense requires only that the exposure of genitals or pubes is to a person who is not the offender's spouse. *State v. Jorgensen*, 758 N.W.2d 830, 835 (Iowa 2008). The second element of the offense requires that the exposure be sexually motivated. *State v. Blair*, 798 N.W.2d 322, 326 (Iowa Ct. App. 2011). "Whether the exposure is sexually motivated can be inferred from the defendant's conduct, his remarks and the surrounding circumstances." *Id.* The third element requires that the viewer be offended by the conduct. *Jorgensen*, 758 N.W.2d at 837. The fourth element is that the offender knew, or should have known, that the viewer would be offended. *State v. Bauer*, 337 N.W.2d 209, 212 (Iowa 1983).

W.G. claims the State did not present sufficient evidence to show the exposure was sexually motivated or that A.C. was offended by his conduct. We first note that the juvenile court found A.C.'s testimony was credible. We give weight to the juvenile court's findings concerning the credibility of witnesses, although we are not bound by the court's conclusions. *In re J.A.L.*, 694 N.W.2d 748, 753 (Iowa 2005).

A.C. testified that W.G. walked up to him and pulled his own pants down, "trying to show me his private." A.C. stated he caught a glimpse of W.G.'s "private." This evidence supports the first element, that W.G. exposed his genitals to someone that was not his spouse. As to the second element, we note A.C. stated W.G. said to him something like, "Do you think my private looks big?"

or asked how large his penis was. We also note the surrounding circumstances that W.G. had previously touched A.C.'s "privates," or testicles. We believe the evidence supports a finding that the exposure of W.G.'s genitals was sexually motivated.

Considering third element, whether A.C. was offended by W.G.'s conduct, A.C. testified he did not want to look at W.G.'s "private." A.C. testified that he walked away from W.G. We conclude this evidence supports a finding that A.C. was offended. The evidence also shows that when W.G. next saw A.C. he showed A.C. a knife and told him not to tell anyone. We believe this evidence supports a finding that W.G. was aware that A.C. found his conduct offensive.

On our de novo review of the record, we determine the State presented evidence to show beyond a reasonable doubt that W.G. engaged in the delinquent act of indecent exposure.

**B.** A person commits assault with intent to commit sexual abuse if the person commits an assault, as defined in section 708.1, with the intent to commit sexual abuse. Iowa Code § 709.11. Assault is defined as "[a]ny act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act," or "[a]ny act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act." *Id.* § 708.1(1), (2).

W.G. does not challenge any specific element of the offense of assault with intent to commit sexual abuse but claims only that the State failed to present proof beyond a reasonable doubt regarding this offense.

We conclude the evidence shows W.G. engaged in physical contact with A.C. that was insulting or offensive to him. A.C. testified that on two occasions W.G. pulled down A.C.'s pants and touched his "privates." He stated that on the second occasion W.G. squeezed his "privates," which he further clarified by stating W.G. had squeezed his testicles. A.C. demonstrated he found this conduct to be offensive by kicking W.G. and running away.

A person's intent to commit sexual abuse may be referred from the facts and circumstances surrounding the person's actions. *State v. Most*, 578 N.W.2d 250, 254 (Iowa Ct. App. 1998). This may include evidence of sexual comment, touching in a sexual manner, attempting to remove clothing, or other evidence. *Id.* We conclude the evidence in this case supports a finding that W.G. had the intent to commit sexual abuse. W.G. pulled down A.C.'s pants and touched and/or squeezed his "privates," or testicles. We determine the evidence supports a finding that W.G. committed the delinquent act of assault with intent to commit sexual abuse.

We affirm the decision of the juvenile court.

**AFFIRMED.**